

**THE APPEALS PANEL**

Established under an Agreement dated 16<sup>th</sup> October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

---

THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

Fax:

++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

---

**PRIVILEGED AND CONFIDENTIAL**

**APPEAL NUMBER:** [REDACTED]  
**CLAIM NUMBERS:** [REDACTED] &  
[REDACTED]

**BETWEEN**

[REDACTED]

**APPELLANT**

AND

[REDACTED]

**RESPONDENT**

**DECISION**

[REDACTED] makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW and enters the following Decision pursuant to Section 10 of the Appeal Guidelines:

**BACKGROUND**

1. The Appellant [REDACTED] (nee [REDACTED]), was born on [REDACTED] 1927 in Mittelstreu, Germany. The Appellant is the daughter of [REDACTED] who was born on [REDACTED] 1900 in Mittelstreu, Germany. Her mother [REDACTED] was born on [REDACTED] 1899. The Appellant’s father was a manufacturer of leather clothing and lost his job as a result of persecution in November 1938. The Appellant and her four siblings were sent on Kindertransport to England on 25<sup>th</sup> August 1939. The Appellant’s

parents were sent to an unknown concentration camp on 22<sup>nd</sup> March 1942 and were killed on unknown dates.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant claims insurance taken out from an unknown insurer in her Holocaust Insurance Claim Form from the Washington State Insurance Commissioner dated 16<sup>th</sup> June 2000. ICHEIC set up Claim file number [REDACTED] and sent the claim to German insurance companies.
4. [REDACTED] found a name card for Appellant's father with five application numbers. Since it did not find any policy documentation or corresponding files for three policy numbers ([REDACTED]; [REDACTED] and [REDACTED]) but could not exclude that contracts actually came into force, the information regarding these policies was sent to the [REDACTED] ([REDACTED]) for possible payment from the humanitarian fund. According to [REDACTED], policy number [REDACTED] (also [REDACTED]) for 2,400 RM had its benefits paid into policy number [REDACTED] in 1937, thus policy [REDACTED] expired in 1937. Policy number [REDACTED] for 5,000 RM was subject to BEG proceedings in 1963. These details were provided to the Appellant in a provisional decision letter dated 29<sup>th</sup> May 2001 and a final decision letter dated 28<sup>th</sup> June 2005 in which the Appellant was given an opportunity to appeal.
5. The Appellant submitted an appeal form dated 1<sup>st</sup> August 2005 to the Appeals Office and states: *"In 1939, when my sister, I and three brothers were put on a train and sent to England via Kindertransport, our parents assured us that they had taken care of our future. I believe that my father had several insurance policies. [...]. My siblings and I are appealing these two policies."*
6. The Appellant's brother, [REDACTED], claimed the policies [REDACTED] and [REDACTED] in the related Claim file number [REDACTED]. Since this claim concerns the same [REDACTED] policies, and the Appellant states on the appeal form that she is appealing on behalf of her siblings, Claim file number [REDACTED] is joined to this appeal.
7. [REDACTED] responded to the Appellant's appeal in its letter dated 24<sup>th</sup> August 2005 and repeated its reasons for denial.
8. On 7<sup>th</sup> September 2005 the Appeals Office informed the Appellant and [REDACTED] that the appeal will be decided on a *"documents only"* basis unless it received notification from either party requesting an oral hearing within 14 days of the date after receipt of this letter.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a *"documents only"* basis.
10. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> October 2002 made by and among the Foundation "Remembrance, Responsibility and the Future", the ICHEIC and the [REDACTED] and its Annexes, including, but not limited to Annex E, the Appeal Guidelines.

In conformity with Section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision dated 6<sup>th</sup> July 2004 this appeal was assigned to [REDACTED].

The seat of the Appeals Panel is Geneva, Switzerland and the Decision is made there.

## THE CLAIM

11. The Appellant's claim file has the following relevant documentation that has been duly considered:

- i) A letter dated 27<sup>th</sup> November 2002 from [REDACTED] of the State of Washington Office of the Insurance Commissioner. [REDACTED] replied on behalf of the Appellant to [REDACTED] with regard to the cancellation of policy no. [REDACTED] in 1937: "... according to ICHEIC rules the start of Holocaust persecution in Germany was 1933. Therefore, under ICHEIC rules the terms of this policy should not have been negatively affected in 1937." The letter summarizes that the insurance policy no. [REDACTED] commenced on 1<sup>st</sup> May 1935 and was ceded to a "Sparkasse" [savings bank] on 21<sup>st</sup> December 1935. Due to non-payment of premiums since 31<sup>st</sup> July 1938 the "Sparkasse" cancelled the contract on 9<sup>th</sup> February 1939 and received a surrender value of RM280.90 on 28<sup>th</sup> April 1939.
- ii) A fax dated 3<sup>rd</sup> January 2003 in which [REDACTED] submits further information he has received from one of the Appellant's brothers, [REDACTED] (in the form of an undated handwritten letter from "[REDACTED]" to his sister "[REDACTED]"). [REDACTED] states that on 21<sup>st</sup> December 1935 RM2,400 of the RM5,000 of policy no. [REDACTED] had been "... transferred to the Sparkasse Hofheim, [...] perhaps this sum was borrowed against the policy's cash value. In 1937 another policy - #[REDACTED] - for 2,400 RM shows up; this amount was transferred to policy #[REDACTED]. The family believes the reason for the new policy and transfer of funds may have been to bring policy #[REDACTED] back up to its original value of 5,000RM." The family were "confused" regarding the remaining three policies [REDACTED] had mentioned.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

12. [REDACTED] denied the claim for the reasons given in its decision letters dated 29<sup>th</sup> May 2001 and 28<sup>th</sup> June 2005 (paragraph 4).

13. In response to the appeal [REDACTED] reiterated its position in a letter dated 24<sup>th</sup> August 2005 stating that: "*The claimant's father, Mr [REDACTED], had taken out a life insurance policy Ass [REDACTED] with [REDACTED]. The benefits of this insurance contract were charged on Mr [REDACTED]'s life insurance contract [REDACTED] in 1937. Thus, the insurance Ass [REDACTED] was expired.*

*With respect to the policy [REDACTED] a compensation proceeding took place. Within the framework of the German State compensation procedure the community of heirs of Mr [REDACTED] received a compensation payment for the losses from the life insurance contract [REDACTED] due to persecution. According to Section 2(1)(c) of the Agreement a claim concerning life insurance policies is eligible for compensation, if the policy in question was not covered by a decision of a German compensation or restitution authority. This does not apply to Mr [REDACTED]'s life insurance contract [REDACTED] which was covered by a decision of the Bavarian Compensation Authority in Munich."*

[REDACTED] enclosed the following documentation that has been duly considered:

- [REDACTED]' decision letter dated 28<sup>th</sup> June 2005 to [REDACTED] regarding claim number [REDACTED] (see paragraph 6).
- A file card showing the name [REDACTED] and four policy numbers.

- A calculation sheet dated 3<sup>rd</sup> December 1962 for the insurance policy [REDACTED] (ASS [REDACTED]) of [REDACTED]. The insurance policy was taken out on 1<sup>st</sup> May 1935 for RM5,000 and was due to mature on 1<sup>st</sup> May 1959.
- A decision for the Bavarian Compensation Authority dated 1<sup>st</sup> July 1963. This decision awards [REDACTED], [REDACTED], [REDACTED], née [REDACTED], [REDACTED], née [REDACTED], and [REDACTED] a compensation payment of DM487.18 for life insurance policy number [REDACTED].

## THE ISSUES FOR DETERMINATION

14. The existence of the Appellant's fathers' insurance policies [REDACTED] and [REDACTED] with [REDACTED] is not in dispute. The other three policies [REDACTED]; [REDACTED] and [REDACTED] (referred in paragraph 4 above) are not the subject of this appeal as they have been sent to the [REDACTED] for consideration. With regard to the "*confusion*" expressed during the appeals process it seems appropriate to state that the [REDACTED], according to the experience made by the Appeals Panel, in due course will come to a decision as to these policies and will communicate it to the claimant(s).
15. The main issue for determination in this appeal is whether [REDACTED] has established a proper defence as set out in the Appeal Guidelines (Annex E of the Agreement), Section 17, which provides that to succeed in an appeal when the Claimant has satisfied the existence of policies the German company must establish, based on the Relaxed Standards of Proof, that the Claimant is not entitled to any payment if:
  - 17.3.1 the policy was cancelled before the insured event occurred and before the beginning of the Holocaust in the relevant country, in accordance with Section 7.5.1 of the Valuation Guidelines; or
  - 17.3.2 the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of Section 5 of the Valuation Guidelines shall apply; or
  - 17.3.3 another person other than the Claimant, who has submitted a claim, has a higher entitlement to the proceeds of the policy in accordance with Section 2(1)(d) of the Agreement or the Succession Guidelines; or
  - 17.3.4 the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority in accordance with Section 2(1)(c).
16. In this matter there is no doubt that the Appellant, her siblings and her father are Holocaust victims and that the Appellant and siblings would be entitled to the proceeds of any insurance policies as either named beneficiaries or as co-heirs.
17. Taking into account the evidence presented, it is determined that policy number [REDACTED] was transferred (or converted) into policy number [REDACTED]. There is no reason to believe that this transfer (or conversion) meant that the policyholder was deprived of the value accumulated in this previous policy or that it had been "*paid or surrendered into a blocked account*" (Section 17.3.2). To the contrary, the policy was (or became) part of an old cession to a bank (Sparkasse). This is persuasive evidence that the money, at that time, had not been confiscated by the Nazis. This is reflected in the documentation submitted by [REDACTED] (paragraph 13).

18. The only policy that requires determination is number [REDACTED]. This policy was claimed by the policyholder's heirs, including the Appellant, in April 1955. A decision by the Bavarian Compensation Authority dated 1<sup>st</sup> July 1963 awarded payment of DM487.18 to the heirs. The documentation as a whole, is plausible evidence that the heirs were compensated by "*a German restitution or compensation authority*" as specified in Section 17.3.4 of the Agreement. [REDACTED] has succeeded in establishing a valid defence.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated: 20<sup>th</sup> December 2005

---

[REDACTED]